

See Vol. 3484

FILED

JUL 12 1969

WM. B. LUCK, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 16 1969

JAMES RILEY, JR. and
FRANK MARSHALL,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellees.

No. 22511

PETITION FOR REHEARING

COMES NOW the Appellant JAMES RILEY, JR., and pursuant
Rule 40 (a) of the Rules of Appellate Procedure, herewith submits this
petition for Rehearing of the Opinion filed May 28, 1969, in this Court, affirm-
g his conviction, the subject of the above-entitled Appeal by said Appellant.

The following points are suggested for rehearing:

1. The Court's conclusion that the informer was shown to have
een reliable Appellant submits was not warranted by credible evidence.
2. That the trial Court's failure to require disclosure of the
entity of the informer inhibited Appellant from testing by cross-examination
e extent of the claimed reliability.



3. That the failure to require disclosure of identity was error because Appellant was deprived of any opportunity to question the informer on his part in planting the drugs on either of the Appellants or in some conveyance or sack, etc., of theirs, which drugs later were discovered in the state vehicle.

4. That the Court misunderstood one portion of Appellant's claim of lack of probable cause in that Appellant has argued and raised the point that prior to actual discovery of the drugs in the sack mysteriously in the state vehicle, the apparent tips of the informer had proven unreliable (witness the results of the July 5 search). Thus, there was no serious and substantial probable cause for the arrest of Appellant in the state vehicle, which arrest resulted when he was first taken into technical custody, before discovery of the sack with the drugs.

5. That the Court did not discuss or resolve the issue of abandoned property in connection with the discovery of the sack.

6. That there was no showing by Appellee that Appellant had been in the company of known narcotic dealers; only vague references thereto in the transcript, and certainly no showing that Appellant himself knew that they were such.

7. That the Court over-emphasized the off-hand testimony of the officer that he did not see any drugs in the back seat of the state vehicle



before Riley sat in it. Actually, from the testimony it is apparent that the officer did not make a special point of so noticing or searching.

8. That because of the complete lack of bona fide probable cause for the arrest, Appellant RILEY's claimed statement should have been inadmissible, and its occurrence not a portion of this Court's opinion.

9. That there was no showing by Appellee that the life of the informer would have been in jeopardy by requiring disclosure of his identity.

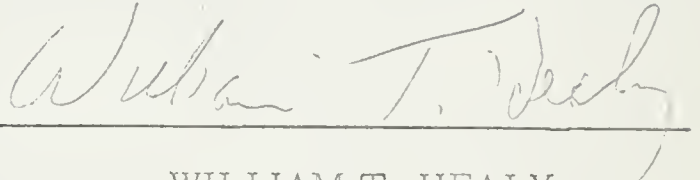
10. That the Court has overlooked the argument of Appellant that the actual discovery of the narcotics at bar was not made until after both Appellants had been out of the vehicle and in the state building for some period of time. Thus, any theory of constructive joint possession is completely discredited as a matter of law because of the lapse during which a third party could have planted the drugs. The record shows that there was not a steady and complete surveillance of the vehicle at all times during this interval.

11. That the Court overlooked the holding of Aguilar vs. Texas, 378 U. S. 108, 84 S. Ct. 1509, discussed in the briefs of Appellants, which requires information of an informant to be based upon personal knowledge of the informer, as applied to the facts of this case.

WHEREFORE, it is respectfully requested that the Court rehear this matter and issue its Order reversing the judgment as to your Appellant.

Dated this 10 day of June, 1969.

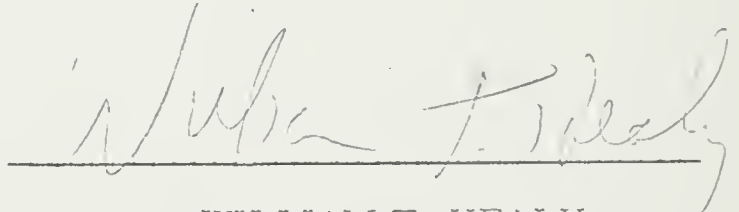
Law Offices of WILLIAM T. HEALY
1009 Tucson Federal Savings Tower
32 North Stone Avenue
Tucson, Arizona



WILLIAM T. HEALY
Attorney for Appellant

STATE OF ARIZONA)		
)	ss.	CERTIFICATE OF SERVICE
COUNTY OF PIMA)		

WILLIAM T. HEALY, being first duly sworn, deposes and says: That he delivered to the office of the United States Attorney at the Federal Building, Tucson, Arizona, three copies of the within Petition for Rehearing and served same upon said United States Attorney on the 10 day of June, 1969.

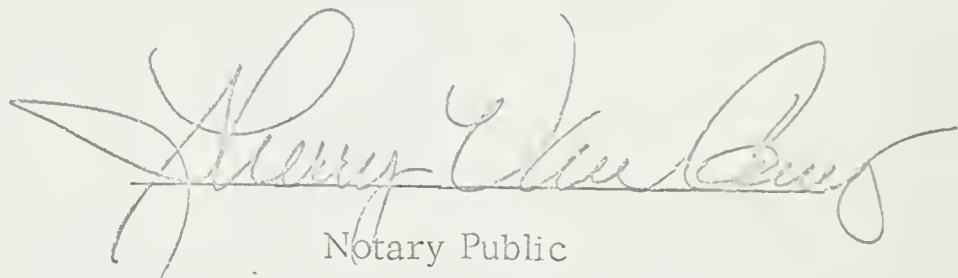


WILLIAM T. HEALY



SUBSCRIBED AND SWORN TO before me this 10 day of

June, 1969.


Notary Public

My Commission Expires:

February 1, 1971

